

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Alternative Telecommunications Utility-Other Telecommunications Provider Annual Reports for the Year Ended December 31, 2002, Filed by Competitive Local Exchange Carriers and Video Distance Learning Providers on a Confidential Basis

RE: PSC Control Nos. 20454, 20457, 20458, 20536, 20537, 20538, 24030, 24031, 24033, 24036, 24037, 24038, 24048, 24050, 24058, 24059, 24060, 24062, 24068, 24069, 24078, 24079, 24590, 24591, 24594, 24595, 25102, 25104, 25105, 25748, 25801, 25802, 26002, 26003, 26009, 26011, 26013, 26069, 26070, 26072, 26295, and 26296

CONFIDENTIALITY DETERMINATION

Introduction

On February 24, 2003, the Public Service Commission (Commission) issued a document entitled "Information Regarding Confidential Filings" concerning the 2002 Alternative Telecommunications Utility-Other Telecommunications Provider (OTH) annual report. The document detailed the filing process associated with the 2002 OTH annual report¹ as well as previous confidentiality rulings concerning OTH annual reports.²

¹ The February 24, 2003, document noted that the 2002 OTH annual report could be filed using one of two procedures: 1) File a portion (e.g., Miscellaneous Revenues detail on pp. 14-15, Operating Revenues, and certain items on p. 19, Central Office Data-End of Year) of the report on a confidential basis using the annual report program's e-mail capabilities; or 2) Submit a request for confidential handling of additional data, in accordance with Wis. Admin. Code § PSC 2.12, in conjunction with a manual filing of the report. A manual filing consists of two completed Confidentiality Request forms, two notarized affidavits, confidential hard copy pages, a confidential diskette containing annual report program files, and a complete public version of the 2002 report, the latter which is posted on the Commission's web page.

² The document noted that, subsequent to the Commission's denial of confidentiality requests concerning information in addition to that allowed confidential treatment in the 2001 OTH annual report program, a number of companies sought judicial review or filed a petition for reconsideration and stay of the Commission's determination. The Commission voluntarily stayed its determination pending the outcome of those court cases, which were then pending in the Dane County Circuit Court, and/or any subsequent related Commission action. Those cases were decided in 2003. Although the Commission prevailed in part, it voluntarily accepted a remand to redetermine the challenged determinations. The determinations made in the present decision are consistent with the circuit court's construction of the confidentiality rule.

2002 OTH Annual Report Confidentiality Determination

On various dates from March 31, to June 30, 2003, the following entities (collectively 11 companies) submitted written applications seeking confidential treatment (and in most cases trade secret status) of certain information in their 2002 OTH annual reports.

Utility No.	Utility Name	PSC Control Nos.	Filing Dates
15	MCImetro Access Transmission Services, LLC (MCImetro)	24030 & 24031 24048 & 24050	April 1, 2003 April 29, 2003
2662	Intermedia Communications, Inc. (Intermedia)	24037 & 24038 24060 & 24062	April 1, 2003 April 29, 2003
2876	KMC Telecom V, Inc. (KMC Telecom V)	26295 & 26296	June 30, 2003
3005	Sage Telecom, Inc. (Sage)	25801 & 25802	March 31, 2003
3751	Enventis Telecom, Inc. (Enventis)	26069 & 6070 26072	May 5, 2003 June 23, 2003
3775	MCI WorldCom Communications, Inc. (MCI WorldCom)	24033 & 24036 24058 & 24059	April 1, 2003 April 29, 2003
4015	Navigator Telecommunications, LLC (Navigator)	20536 & 20537 20538	May 15, 2003 May 23, 2003
5837	TCG Milwaukee, Inc. (TCG)	25748 24078 and 24079	April 1, 2003 May 15, 2003
5845	TDS Metrocom, Inc. (TDS Metrocom)	25102 25104 and 25105	April 8, 2003 April 21, 2003
5912	Time Warner Telecom of Wisconsin, L.P. (Time Warner Telecom)	24590 24591	April 17, 2003 April 23, 2003
7199	Globalcom, Inc. (Globalcom)	20454 & 20457 20458	June 16, 2003 June 18, 2003

In particular, the 11 companies seek confidential treatment (and in most cases trade secret status) of information contained in the 2002 OTH annual report, as itemized in the table below.

Page No. in 2002 OTH Annual Report	Schedule Name	Utilities (by utility no.) Requesting Confidential Treatment of All or a Portion of the Schedule ³
5	Identification and Ownership	3005
6	Income Statement-Total Company	2662, ⁴ 3005, 3751, 4015, 5837, 5845, 5912, 7199

³ In addition to that already provided for in the 2002 OTH annual report program.

⁴ Intermedia's April 1, 2003, filing under Confidentiality Request No. 24037 also included this schedule printout as a hard copy page. The company's April 29, 2003, filing under Confidentiality Request No. 24062 did not include this schedule printout as a hard copy page. The current public version posted on the Commission's web page basically contains no data on this page.

2002 OTH Annual Report Confidentiality Determination

Page No. in 2002 OTH Annual Report	Schedule Name	Utilities (by utility no.) Requesting Confidential Treatment of All or a Portion of the Schedule ³
7	Income Statement--Wisconsin Intrastate Operations	15, 2662, 3751, 3775, 5837, 5845, 5912, 7199
8	Total Company Balance Sheet--Assets	3005, 3751, 4015, 5837, ⁵ 5845, 5912, 7199
9	Total Company Balance Sheet--Liabilities and Capital	3005, 3751, 4015, 5837, ⁵ 5845, 5912, 7199
10	Total Company Balance Sheet--Notes	5837, ⁵ 5845, 7199 ⁶
11	Retained Earnings--Total Company	3005, 3751, 4015, 5837, 5845, 5912, 7199
12-13	Telecommunications Plant in Service & Accumulated Depreciation & Amortization--Wisconsin	15, 2662, ⁷ 3751, 3775, 5845, 5912, 7199
14-15	Operating Revenues	15, 2662, 2876, 3005, 3751, 3775, 4015, 5837, 5845, 5912, 7199
16	Average Number of Subscribers	15, 2662, ⁷ 3005, 3751, 3775, 4015, 5837, 5845, 5912, 7199
17-18	Access Expenses, Billing Expenses & Charges Imposed by Another Carrier	15, ⁸ 2662, ⁷ 3005, 3751, 3775, ⁹ 4015, 5837, 5845, 7199
19	Central Office Data-End of Year	15, 2662, ⁴ 2876, ¹⁰ 3751, ¹¹ 3775, ⁹ 5837, ¹² 5845, 5912, 7199

⁵ While TCG's notarized affidavits do not specifically reference it, the company has requested confidential treatment for the dollar amounts contained in the December 31, 2002, balance sheet of Teleport Communications Group, Inc., which was included on p. 10. This balance sheet includes information similar to that required on pp. 8 and 9 of the 2002 OTH annual report.

⁶ A hard copy version of this page was attached to Confidentiality Request No. 20457 filed by Globalcom with the Commission on June 16, 2003; a subsequent filing under Confidentiality Request No. 20458 on June 18, 2003, did not include this page. The public version posted on the Commission's web page does not substantially mask any data on this page.

⁷ Although Intermedia's notarized affidavits claim that this information should be accorded confidential treatment, no hard copy versions of the page were attached to the confidentiality request forms filed with the Commission. The public version posted on the Commission's web page basically contains no data on this page.

⁸ Although MCImetro's notarized affidavits claim that this information should be accorded confidential treatment, no hard copy versions of the page were attached to the confidentiality request forms filed with the Commission. The public version posted on the Commission's web page basically contains no data on this page.

⁹ Although MCI WorldCom's notarized affidavits claim that this information should be accorded confidential treatment, no hard copy versions of the page were attached to the confidentiality request forms filed with the Commission. The public version posted on the Commission's web page basically contains no data on this page.

¹⁰ On this schedule, KMC Telecom V requested confidential treatment only for those items allowed for provisional confidential treatment in the 2002 OTH annual report program.

¹¹ On this schedule, Enventis requested confidential treatment only for those items allowed for provisional confidential treatment in the 2002 OTH annual report program. While Enventis' May 5, 2003, filing under Confidentiality Request No. 26069 did not include an internal hard copy printout of this schedule page, the June 23, 2003, filing did include such printout.

¹² Although TCG's notarized affidavits claim that this information should be accorded confidential treatment, no hard copy versions of the page were attached to the confidentiality request forms filed with the Commission. The public version posted on the Commission's web page basically contains no data on this page.

2002 OTH Annual Report Confidentiality Determination

Page No. in 2002 OTH Annual Report	Schedule Name	Utilities (by utility no.) Requesting Confidential Treatment of All or a Portion of the Schedule ³
20	Assessable Revenues	15, 2662, 3751, 3775, 5837, 5845, 5912
22	Schedule and Report Notes	5845

Many of the 11 companies requested confidential treatment (and in most cases trade secret status) for selected information on the following schedules (in addition to provisional confidential treatment, if any, noted in the Commission's February 24, 2003, Information Regarding Confidentiality Filings document) in their respective 2002 OTH annual reports: Identification and Ownership (p. 5); Income Statement--Total Company (p. 6); Income Statement-Wisconsin Intrastate Operations (p. 7); Total Company Balance Sheet--Assets (p. 8); Total Company Balance Sheet--Liabilities and Capital (p. 9); Total Company Balance Sheet-Notes (p. 10); Retained Earnings--Total Company (p. 11); Telecommunications Plant in Service & Accumulated Depreciation & Amortization--Wisconsin (pp. 12-13); Operating Revenues (pp. 14-15); Average Number of Subscribers (p. 16); Access Expenses, Billing Expenses & Charges Imposed by Another Carrier (pp. 17-18); Central Office Data--End of Year (p. 19); Assessable Revenues (p. 20); Other Information (p. 21); and Schedule and Report Notes (p. 22). For the reasons stated in a Confidentiality Determination dated July 8, 2003, confidential treatment for the above specifically identified data was granted on a provisional basis, without consideration of the merits of the arguments of any company contained in respective affidavits accompanying the 2002 OTH annual reports, based on the then-pending status of related court cases.

2002 OTH Annual Report Confidentiality Determination

On various dates from July 17 to August 19, 2003, the following entities (collectively four companies) submitted written applications seeking confidential treatment (and trade secret status) of certain information in their 2002 OTH annual reports.

Utility No.	Utility Name	PSC Control Nos.	Filing Dates
15	MCImetro	26002 & 26003	August 11, 2003
2662	Intermedia	26009 & 26011 26013	August 13, 2003 August 19, 2003
5837	TCG	24068 & 24069	July 21, 2003
5912	Time Warner Telecom ¹³	24594 & 24595	July 17, 2003

In particular, the four companies seek confidential treatment (and trade secret status) of information contained in the 2002 OTH annual report, as itemized in the table below.

Page No. in 2002 OTH Annual Report	Schedule Name	Utilities (by utility number) Requesting Confidential Treatment of All or a Portion of the Schedule ¹⁴
6	Income Statement-Total Company	2662, ¹⁵ 5837, 5912
7	Income Statement-Wisconsin Intrastate Operations	15, 2662, 5837, 5912
8	Total Company Balance Sheet-Assets	5837, ¹⁶ 5912
9	Total Company Balance Sheet-Liabilities and Capital	5837, ¹⁶ 5912
10	Total Company Balance Sheet-Notes	5837 ¹⁶
11	Retained Earnings-Total Company	5837, 5912
12-13	Telecommunications Plant in Service & Accumulated Depreciation & Amortization-Wisconsin	15, 2662, ¹⁵ 5912
14-15	Operating Revenues	15, 2662, 5837, 5912
16	Average Number of Subscribers	15, 2662, ¹⁵ 5837, 5912

¹³ A supplemental affidavit pertaining to Time Warner Telecom's 2002 OTH annual report was also filed on October 17, 2003.

¹⁴ In addition to that already provided for in the 2002 OTH annual report program.

¹⁵ Although Intermedia's notarized affidavits claim that this information should be accorded confidential treatment, no hard copy versions of the page were attached to the confidentiality request forms filed with the Commission. The public version posted on the Commission's web page basically contains no data on this page.

¹⁶ While TCG's notarized affidavits do not specifically reference it, the company has requested confidential treatment for the dollar amounts contained in the December 31, 2002, balance sheet of Teleport Communications Group, Inc., which was included on p. 10. This balance sheet includes information similar to that required on pp. 8 and 9 of the 2002 OTH annual report.

2002 OTH Annual Report Confidentiality Determination

Page No. in 2002 OTH Annual Report	Schedule Name	Utilities (by utility number) Requesting Confidential Treatment of All or a Portion of the Schedule ¹⁴
17-18	Access Expenses, Billing Expenses & Charges Imposed by Another Carrier	15, ¹⁷ 2662, ¹⁵ 5837
19	Central Office Data-End of Year	15, 2662, ¹⁵ 5837, ¹⁸ 5912
20	Assessable Revenues	15, 2662, 5837, 5912

Many of the four companies have requested confidential treatment (and trade secret status) for selected information on the following schedules (in addition to provisional confidential treatment, if any, noted in the Commission's February 24, 2003, Information Regarding Confidentiality Filings document) in their respective 2002 OTH annual reports: Income Statement--Total Company (p. 6); Income Statement--Wisconsin Intrastate Operations (p. 7); Total Company Balance Sheet--Assets (p. 8); Total Company Balance Sheet--Liabilities and Capital (p. 9); Total Company Balance Sheet--Notes (p. 10); Retained Earnings--Total Company (p. 11); Telecommunications Plant in Service & Accumulated Depreciation & Amortization--Wisconsin (pp. 12-13); Operating Revenues (pp. 14-15); Average Number of Subscribers (p. 16); Access Expenses, Billing Expenses & Charges Imposed by Another Carrier (pp. 17-18); Central Office Data--End of Year (p. 19); and Assessable Revenues (p. 20).

In 2002, nine court cases were filed. The nine cases were subsequently consolidated into two cases. One court case resulted in a decision favorable to the Commission's determinations; the other court case resulted in an adverse decision. See footnote 2.

¹⁷ Although MCImetro's notarized affidavits claim that this information should be accorded confidential treatment, no hard copy versions of the page were attached to the confidentiality request forms filed with the Commission. The public version posted on the Commission's web page basically contains no data on this page.

¹⁸ Although TCG's notarized affidavits claim that this information should be accorded confidential treatment, no hard copy versions of the page were attached to the confidentiality request forms filed with the Commission. The public version posted on the Commission's web page basically contains no data on this page.

2002 OTH Annual Report Confidentiality Determination

This confidentiality determination is made pursuant to the Commission's jurisdiction under Wis. Stat. §§ 196.02(1), 196.14, and other provisions of Wis. Stat. ch. 196 and Wis. Stat. §§ 19.32-.39, as may be pertinent hereto, the Commission's November 21, 2000, order delegating confidential handling determinations, and Wis. Admin. Code § PSC 2.12.

Findings of Fact

1. All of the 11 above-referenced companies are competitive local exchange carriers (CLECs) which are required to file an OTH annual report with the Commission. The statutory filing date for the OTH annual report covering 2002 calendar year operations was April 1, 2003; 130 CLECs and video distance learning providers (VDLs) were required to file this report for the 2002 calendar year.¹⁹

2. The above requests for confidential handling concern portions of 2002 OTH annual reports which individually became Commission records, within the meaning of Wis. Stat. § 19.32(2).

3. Each requester filed affidavits in support of the requests claiming that the records, if released, would aid a competitor of a public utility in competition with the public utility, as provided under Wis. Stat. § 196.14, and, in most cases, constitute trade secrets, as defined in Wis. Stat. § 19.32(2).

4. Pursuant to Wis. Admin. Code § PSC 2.12(6), the Commission has confidentially handled the records pending this determination and will continue to confidentially handle the records after the date of this determination.

¹⁹ As of the date of this determination, 121 of the 130 entities have actually filed the 2002 OTH annual report with the Commission.

2002 OTH Annual Report Confidentiality Determination

5. The records contain information which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

6. The records contain information that would aid a competitor of the respective entities in competition with the requesters.

Conclusions of Law

1. There is a reasonable basis to conclude that the records contain information which would aid a competitor of a public utility in competition with the public utility, within the meaning of Wis. Stat. § 196.14.

2. There is a reasonable basis to conclude that in situations where a request for trade secret status was made, the records contain trade secrets within the meaning of Wis. Stat. § 134.90(1)(c).

Order

WHEREFORE, confidential treatment of additional information requested by the 11 companies in their 2002 OTH annual reports is **granted**. Trade secret status for such information under Wis. Stat. §§ 19.36(5) and 134.90(1)(c), as claimed by most of the 11 companies, is likewise **granted**. The Commission reiterates the notation contained in its February 24, 2003, Information Regarding Confidential Filings document that the 2002 OTH annual report program allows confidential treatment to selected information contained on the Operating Revenues (pp. 14-15) and Central Office Data-End of Year (p. 19) schedules in the now-filed 2002 OTH annual reports.

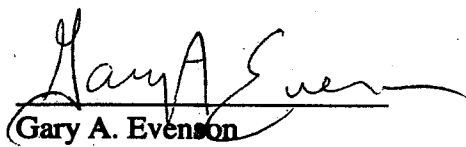
2002 OTH Annual Report Confidentiality Determination

This confidentiality determination is not a final determination under the Public Records law; it is the Commission's decision for purposes of managing its files. This confidentiality determination does not prejudice the right of any person to submit a public records request to inspect the contents of the filings subject to this determination.

This order is effective upon mailing.

Dated at Madison, Wisconsin, 30 April 2004.

For the Commission:



Gary A. Evenson
Administrator
Telecommunications Division

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See attached Notice of Appeal Rights

2002 OTH Annual Report Confidentiality Determination

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98